

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEAN B. MUELLER,

Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 222324

Isabella Circuit Court

LC No. 94-006944-FH

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right the order reinstating his probation, after probation had been discharged based on the erroneous finding that defendant had paid the amount of restitution ordered. We affirm.

Defendant pleaded guilty to one count of delivering a non-sufficient funds check, MCL 750.131(3)(c); MSA 28.326(3)(c). The plea involved a check for \$594.84 written on December 11, 1993. As part of the plea agreement, defendant agreed to pay restitution for all bad checks he passed in Isabella County to avoid additional charges. Defendant was sentenced to five years' probation, with an amount of restitution to be determined. An amended probation order was entered ordering defendant to pay \$594.84 in restitution.

Defendant's probation officer made the erroneous determination that all fees had been paid, and based on her petition, an order of probation discharge was filed on February 23, 1998. The prosecutor moved to set aside the discharge, asserting that a clerical error was made showing no outstanding balance. After hearing argument, the trial court granted the motion and reinstated probation. Defendant was directed to pay \$4,788.47 in restitution by March 9, 2001, in accord with the original terms of the plea bargain.

On appeal, defendant argues that the reinstatement of probation after discharge violates the protection against double jeopardy. We disagree.

The fact that a circuit court discharged a defendant from probation does not preclude resentencing. *People v Lamb (After Remand)*, 201 Mich App 178; 506 NW2d 7 (1993). *People v Gregorczyk*, 178 Mich App 1; 443 NW2d 816 (1989), on which defendant relies, has been limited to cases with similar facts. *Harper v Dept of Corrections*, 215 Mich App 648, 650; 546 NW2d 718 (1996). Defendant did not face double jeopardy in this case. His probation was discharged based on an erroneous finding. Within the original five year term of probation, his probation was reinstated to secure the payment of restitution, for which he was responsible by the terms of the plea agreement. There is no showing that defendant received multiple punishments for the same offense.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski